

Special Civil Application No 1700 of 1986

Date of decision: 06th February 1996.

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

1. Whether Reporters of Local Papers may be allowed to see the judgements? YES

2. To be referred to the Reporter or not? NO

3. Whether Their Lordships wish to see the fair copy of the judgement? NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? NO

5. Whether it is to be circulated to the Civil Judge? NO

MURLIDHAR JETTHALAL DWVEDI

vs

THE STATE OF GUJARAT

Appearance:

Shri Arun H. Mehta, Advocate, for the Petitioner.

Shri D.N.Patel, Assistant Government Pleader, for the Respondents.

Coram : MR.JUSTICE A.N.DIVECHA

(06th February 1996)

ORAL JUDGEMENT

A writ of mandamus is prayed for by the petitioner in this petition under Article 226 of the Constitution of India inter alia restraining the respondents from preventing the petitioner from carrying on mining operations in the area mentioned in the lease deed with respect to survey No.65 situated in village Kubadi admeasuring 377 acres (the disputed land for convenience). The petitioner has also sought declaration by means of this petition under Article 226 of the Constitution of India that he is entitled to carry on the mining operations

pursuant to the aforesaid lease deed. Its copy is at Annexure-A to this petition.

2. It appears that the disputed land was part of a jagir held by some jagirdars. That jagir came to be abolished by what is popularly known as the Jagirs Abolition Act. It however appears that the right to mines and minerals subsisting at the relevant time came to be protected in favour of the jagirdars. Pursuant thereto, the petitioner obtained a lease deed from the then jagirdar with respect to the disputed land. It was executed on 20th January 1981. Its xerox copy is at Annexure-A to this petition. It appears that he was prevented by the respondents from carrying on mining operations pursuant thereto. He has therefore moved this court by menas of this petition under Article 226 of the Constitution of India for the aforesaid reliefs.

3. Rights to mines and minerals in the jagirdari lands came to be abolished by the Bombay Land Revenue Code and Land Tenure Abolition Laws (Gujarat Amendment) Ordinance, 1981 (the Ordinance for brief). The Ordinance was replaced by the Bombay Land Revenue Code and Land Tenure Abolition Laws (Gujarat Amendment) Act, 1982 (the Amending Act for brief). Section 7 thereof provided for transitory provisions. Relying on these transitory provisions, learned Advocate Shri Mehta for the petitioner has urged that the lease deed at Annexure-A to this petition has come to be saved in favour of the petitioner. As against this, learned Assistant Government Pleader Shri D.N.Patel for the respondents has urged that section 7 of the Amending Act does not save the lease deed at Annexure-A to this petition as conditions specified in sub-section (2) thereof are not fulfilled. Learned Assistant Government Pleader Shri Patel for the respondents has gone to the extent that the lease deed at Annexure-A to this petition is even otherwise not saved by section 7 of the Amending Act.

4. It would be quite proper to look at section 7 of the Amending Act in order to appreciate rival submissions urged before me. It reads:

"7. Transitory provision - (1) Subject to the provisions of sub-sections (2) and (3), nothing contained in the Bombay Land Revenue Code, 1878 (Bombay V of 1879), or any of the Bombay Land Tenure Abolition Laws, as amended by this Act, shall affect anything done or any action taken before the commencement of the Bombay Land Revenue Code and Land Tenure Abolition Laws (Gujarat Amendment) Ordinance, 1981 (Guj. Ord. 9 of 1981) (hereinafter referred to as "the said Ordinance") in relation to any mines, minerals or quarries vesting in a person other than the Government.

(2) Any prospecting licence, mining lease, quarry lease,

or any document evidencing any mineral concession, in respect of land in which the minerals vested in a person other than the Government brought into conformity with the provisions of the Mines and Minerals (Regulation and Development) Act, 1957 (LXVII of 1957), and rules made thereunder under section 16 of that Act or issued under that Act and the rules made thereunder and in force at the commencement of the said Ordinance shall continue as if such licence, lease or document were given in respect of land in which minerals vested in the Government and accordingly,--

- (i) such licence, lease or document shall be construed as if it was given by the Government;
- (ii) any rent, royalty or other sum payable to such person by virtue of such licence, lease, or document shall from the commencement of the said ordinance be payable to the Government; and
- (iii) such licence or lease shall be renewable according to law.

(3) Any obligation or liability of the Government to pay any royalty or any other sum to a person in relation to his right or privilege to any mines and mineral products existing before the commencement of the said ordinance shall cease and no legal proceeding or remedy for enforcement of such right or privilege or in respect of such obligation or liability shall be instituted, continued or enforced in any court, or other authority."

A bare reading of sub-section (2) of section 7 of the Amending Act would go to show that inter alia a lease deed would be saved provided it is brought into conformity with the provisions of the Mines and Minerals (Regulation and Development) Act, 1957 and rules made thereunder under section 16 of the Amending Act or issued under that Act or rules made thereunder and in force at the commencement of the said Ordinance. It thus becomes clear that, in order to get protection under section 7 (2) of the Amending Act, a lease deed has to be brought in conformity with the relevant provisions contained in the Mines and Minerals (Regulation and Development) Act, 1957 and rules made thereunder. It is not the case of the petitioner before me that the lease deed at Annexure-A to this petition was brought in conformity therewith. In that view of the matter, the lease deed at Annexure-A to this petition has not come to be saved under any provision of section 7 including section 7(2) of the Amending Act.

5. In this view of the matter, I have not chosen to deal with the submissions urged before me by learned Assistant Government Pleader Shri Patel for the respondents to the effect that the lease deed at Annexure-A to this petition will not be covered by any of the provisions contained in the Amending Act. It has been urged on behalf of the respondents that no rights whatsoever subsisted in favour of the lessor at the time of execution of the lease deed at Annexure-A to this petition. It has also been urged on behalf of the respondents that the disputed land has now become a part of the forest land and the mining lease cannot be allowed to operate therein in view of the binding ruling of the Supreme Court in the case of RURAL LITIGATION AND ENTITLEMENT KENDRA v. STATE OF U.P. reported in AIR 1988 Supreme Court at page 2187. I have however not chosen to deal with the aforesaid submissions in view of my conclusion that the lease deed at Annexure-A to this petition is not saved by section 7 (2) of the Amending Act.

6. In view of my aforesaid discussion, I am of the opinion that this petition cannot succeed. It has to be rejected.

7. In the result, this petition fails. It is hereby rejected. Rule is accordingly discharged with no order as to costs.

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